



# Appeal Decision

Site visit made on 12 September 2023

**by Peter White BA(Hons) MA DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 November 2023**

**Appeal Ref: APP/H0520/C/22/3293584**

**Land at and including Unit 11 Little America Industrial Estate, Moor Road, Great Staughton, St Neots PE19 5BJ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended. The appeal is made by Forestry Fuels Limited against an enforcement notice issued by Huntingdonshire District Council (LPA).
- The notice was issued on 25 January 2022.
- The breach of planning control as alleged in the notice is without Planning Permission the material Change of Use of the land from Sui Generis MOD (former WW2) use to B2 General Industrial use, being charcoal manufacture and wood heat treatment, and expansion of the use beyond the planning unit onto previously undeveloped/unused land and associated B8 open storage.
- The requirements of the notice are:
  - i) Permanently cease B2 General Industrial use, currently charcoal manufacture and wood heat treatment, of the building and land and associated B8 open storage use of the land.
  - ii) Permanently remove all plant, machinery, stock and raw materials associated with the current use from the land and restore the land to its former condition, removing any contamination caused by the current use.
- The periods for compliance with the requirements are:
  - for i) 3 months
  - for ii) 4 months
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary of decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations as set out below in the Formal Decision.**

## Applications for costs

1. An application for costs was made by Forestry Fuels Limited against Huntingdonshire District Council. This application is the subject of a separate decision.

## Preliminary Matters

2. The appellant does not seek to make an appeal under ground (d), but refers to another appeal made by the land owner, Little America Limited (ref: APP/H0520/X/23/3319777). That appeal relates to the refusal of an application for a certificate of lawful use or development (LDC) for use of B2 (General Industrial) and B8 (Open Storage) use for part of the land subject to the notice. At the request of the appellant and the Council that appeal is being considered concurrently with this enforcement appeal, but is subject to a separate decision. Where relevant, the implications of that decision are considered below.

## **The Notice**

3. The notice alleges a material change of use of the Land to B2 General Industrial use and associated B8 open storage. Similarly, Section 5(i) of the notice requires that the B2 General Industrial use and associated B8 open storage use of the Land cease.
4. The appellant seeks to make a distinction between the original area of land and an additional area to the north. By their own evidence the land to the north is in use for storage and the drying of firewood. Even if there is a degree of physical separation, the land is under single occupation and functions as a single unit. As a result, the Land against which the notice is directed is a single planning unit. The notice is therefore directed against a mixed use of the Land. Case law has established that mixed uses do not fall into any specific use class, therefore references to B2 or B8 use classes should be deleted from the allegation.
5. In addition, the reference in the alleged breach to the “expansion of the use beyond the planning unit onto previously undeveloped/unused land” is superfluous and unnecessary, since the notice is directed against a mixed use on the Land as a whole and as shown on the plan attached to the notice.
6. As the substance of the allegation and requirements would remain, there would be no injustice to either the appellant or the LPA were I to correct and vary the notice by removing references to B2 and B8 use classes, and removing the superfluous words from the alleged breach as set out above.
7. Section 181(1) of the Act states that compliance with an enforcement notice shall not discharge the notice. The use of the word ‘permanently’ in the requirements of the notice is therefore unnecessary. The notice can be varied to delete reference to it without injustice to the appellant or the LPA.

## **The appeal on ground (a) and the Deemed Planning Application (DPA)**

8. Appeals on ground (a) are made on the basis that planning permission ought to be granted for the alleged breach of planning control as stated in the notice. The notice, as corrected, alleges the material change of use of the Land from Sui Generis MOD (former WW2) use to general industrial use, being charcoal manufacture and wood heat treatment, and associated open storage.

### *Main Issues*

9. The main issues are:
  - the appropriateness of the use, considering the location and character of the area; and
  - the effect of the development on the living conditions of nearby residential occupiers and environmental effects on users of the surrounding land.

### *Location and character*

10. The Land is part of an area known as Little America Industrial Estate, around 2.5 miles south of the built-up area of Great Staughton. It is surrounded by fields, with a public bridleway on its southern boundary. Located south-east of Little Staughton Airfield, it was once associated with the former RAF Little

Staughton airbase which closed in the 1950s, and the building is one of the original buildings.

11. The Land is occupied by Forestry Fuels Limited, which produces firewood products on the land by the cutting and drying of wood and the manufacture of charcoal.
12. For planning policy purposes, the land is located within the countryside. The appellant considers the production of charcoal is a rural activity by its nature due to its associations with forestry. However, timber is imported onto the site, and the development is not an agricultural or land-based business which must be undertaken in the location of the land itself, as is the case for agriculture or forestry.
13. At the scale occurring, the production elements of the use, and particularly the cutting, splitting, burning and drying, are industrial in nature. There is also a substantial amount of external storage, in the form of timber stored pre- and post-production, and as fuel for elements of the processes. Nevertheless, excepting the security fencing along the southern boundary (which neither party have alleged is part of the use), with the current level of timber storage, and the relatively low heights of the structures on the land, the effects on visual character are limited.
14. At the same time, character is not limited to visual matters, and at the current scale, wood cutting and splitting, and associated use of the telehandler, are externally located noise generating activities. Although noise is considered further below in relation to living conditions and environmental effects, the area is a relatively tranquil one. The appellant's noise report describes the sawing and splitting activity as being fairly continuous during core working hours of 8am-5pm around 4 days a week, and frequent noise from the use have changed the character of the area. When operating, fans associated with the dryer and charcoal retort also run 24 hours a day, and the charcoal packer also generates noise.
15. Although none of the appellant's sound measurement positions was located on the public bridleway, position N2 is a similar distance from the site, albeit closer to the main noise-generating activities. Comparative measurements at measurement location N1 shows that sound levels fall over a relatively short distance. Nevertheless, the evidence before me suggests that noise levels from the use have an adverse effect on the character of the area.
16. Air quality and odour are also capable of contributing to the area's character, and I have two assessments before me; from the appellant and an interested party. The appellant's report appears to take no account of the public bridleway adjoining the southern edge of the land. It describes the charcoal retort as a diesel burner directed through the charcoal retort stack, with a fire box designed to burn the wood-gas produced. It advises it takes approximately 22 hours up to 25 times a year, approximately one day a week between March and August. The other report describes it as a batch process in which the retort is loaded with wood, ignited using a propane gas<sup>1</sup> burner and then allowed to smoulder for many hours. The biomass boiler (for the drying of firewood) uses firewood fuels.

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<sup>1</sup> Although it is actually fired by diesel burner.

17. Whichever report is considered, it is clear that the air quality in the vicinity of the land, and on the public bridleway, would be reduced in terms of measured particulates and gases when the charcoal retort in particular is operating. The length and frequency of operation is such that it would have a negative effect on the character of the area, particularly for users of the public bridleway.
18. Furthermore, the development does not gain the support of Huntingdonshire's Local Plan to 2036 (2019) (HLP) Policies LP19 and LP33. Those policies support business uses in the countryside and make provision for the conversion of rural buildings in certain specific circumstances. However, the Land is not within or adjoining an 'Established Employment Area', development did not result in the re-use of land last used for lawful B1, B2 or B8 purposes, and use of the building is a minor element of the use and ancillary to the main uses occurring externally on the Land. In any case, the development has not led to the enhancement of the immediate setting.
19. In conclusion, the use is not appropriate considering the location and character of the area. It conflicts with HLP Policies LP10, LP14 and LP19. Among other things, these policies restrict development in the countryside to the limited and specific opportunities set out in the plan, require development to recognise the intrinsic character and beauty of the countryside, and require adverse impacts from air pollution and odour to be made acceptable and not to give rise to impacts that would adversely affect the use and enjoyment of the countryside. Although the development does not conflict with HLP Policy LP33, neither does it gain its support. But I have not found HLP Policy LP9, which relates to the development of land within or well-related to the built-up area of a Small Settlement, to be relevant to the development.

*Living conditions and environmental effects*

20. The notice alleges unacceptable levels of smoke, odour, air pollution and noise on neighbouring (commercial) units, residential properties and users of the surrounding land.
21. The land is located at the southern end of the area known as the Little America Industrial Estate, and is otherwise surrounded by agricultural land, much of which is used for arable production. A public bridleway runs along its southern boundary, and a single dwelling, Basmead Barns Farm lies just over 200 metres to the east.
22. The LPA's case is that it has not been demonstrated that the use occurring does not cause harm to residents and users of the surrounding land. But it has provided very little evidence of harm occurring. Nevertheless, I have before me professional evidence from the appellant and an interested party.
23. The appellant advises that the use has developed over the years, and that the use of the retort, rather than the ring kilns used in the earlier years, produces less smoke. At the same time, both parties acknowledge that the scale of the operations undertaken on the land have also increased to meet demand. Whatever the case may have been, the acoustic, air quality and odour reports submitted consider the use occurring in recent times, and I have made my assessment on the basis of the use occurring at the time the evidence was submitted.

24. In relation to air quality the evidence includes that relating to particulate matter, including smoke<sup>2</sup>. Huntingdonshire District Council's Environmental Health Team advise they had received complaints regarding impacts on human health due to activities taking place on this site, but did not appear to have seen the appellant's Air Quality and Odour Assessment. That assessment concludes that predicted pollution concentrations at all assessed receptors would not exceed the relevant air quality standards, and complies with relevant national and local planning policies; and that there are no air quality or odour constraints.
25. The appellant's assessment considered 4 specific receptors, being 3 commercial buildings and the nearest residential dwelling. It did not, however, consider the public bridleway running along the southern boundary of the appeal site and extending north at each end, where contours for predicted NO<sub>2</sub>, PM<sub>10</sub>, PM<sub>2.5</sub> and CO show some of the highest concentrations. Predicted annual mean concentrations of particulate matter PM<sub>10</sub> and PM<sub>2.5</sub> extend a significant distance, covering significant stretches of the public right of way network and the nearest dwelling, as well as other units on the industrial estate. Mapped NO<sub>2</sub> and CO concentrations also extend onto the bridleway. Relatively high concentrations of PM<sub>10</sub> and PM<sub>2.5</sub> extend onto a short stretch of the bridleway, at or close to air quality standards. The report notes that the operation of the charcoal manufacturing may cause high short term PM<sub>10</sub> concentrations, but that it only occurs 25 times a year, whereas exceedances are permitted up to 35 times per year. Overall, the evidence suggests the development gives rise to harmful air quality effects on users of the bridleway.
26. Furthermore, the air quality assessment by Air Pollution Services concluded there were too many unknown factors regarding the operations to enable a sufficiently accurate representation in a computer model. In particular, they note the retort is a bespoke design, are concerned that the wood fuel for the biomass boiler is both stored outside (and therefore not of low moisture content) and includes wood chip and sawdust. They advise the wind rose suggests the wind will blow towards the bridleway 35% of the time, and that users of the bridleway are most likely to experience adverse air quality, albeit only for short periods. They state that atmospheric conditions will also occur at times when emissions will not disperse, particularly given the low chimney heights of the retort and firebox. They conclude that the plant is unregulated<sup>3</sup> and uncontrolled and emissions could be very significant, resulting in potentially significant risks to the local area. These factors further confirm my findings on air quality.
27. Regarding odour, the appellant's desk-based assessment of negligible risk of odour exposure and negligible effect of likely odour effect contrasts with the reported effects on residents of the nearest dwelling. The reported effects appear to relate to the charcoal manufacturing, and the appellant's report appears to have been prepared on the basis of no known history of odour complaints. However, the Council's Environmental Health Team advise they had received complaints regarding nuisance from odour due to activities taking place. I also note that the appellant's reference to approximately weekly charcoal manufacturing events from March to August, combined with only a 7.6% frequency of wind towards the nearest dwelling. The effects on those

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<sup>2</sup> The Air Pollution Services air quality assessment describes PM<sub>10</sub> as smoke and PM<sub>2.5</sub> as fine particulate matter.

<sup>3</sup> Although the appellant advises they are regulated and inspected by the Environment Agency.

occasions when odour is carried to the dwelling may therefore be significant, even if infrequent.

28. In terms of noise, a number of the processes are described above, and mostly occur outside the building. At the nearest residential property the appellant's noise report modelling predicts noise levels at or below background levels, and concludes the noise should be rated as, "No Observed Adverse Effect", or "present and not intrusive"; consequently, it recommends no mitigation is required. Although I note the observations of the occupier of the nearest dwelling, I have seen no technical evidence that would lead me to come to a different view in respect of the nearest dwelling.
29. The appellant's noise report does not directly consider the effect of noise on occupiers of other units on the Little America Industrial Estate, but I have seen no objections from other tenants. I have also seen no technical evidence that noise from the development is harmful to users of the public bridleway, or that levels would be so high that they would be harmful even to transient users.
30. In conclusion, for the reasons above, the evidence suggests the development has harmful environmental effects on users of the bridleway in terms of air quality, and there is insufficient evidence before me to demonstrate there are not harmful odour effects on users of the bridleway and the living conditions of nearby residential occupiers. It therefore conflicts with HLP Policies LP10 and LP14. Among other things, these policies require adverse impacts from air pollution and odour to be made acceptable and not to give rise to impacts that would adversely affect the use and enjoyment of the countryside.

#### *Other Matters*

31. The development is a local business employing four people, including some from the same family, and supplies other local businesses. I also note the support for the business from other occupiers of the industrial estate. Although the effect on these individuals may be significant, the weight I afford to these effects would not outweigh the harm I identify to others in the main issues, and the consequent conflict with development plan policies.
32. Interested parties have raised other matters against the development, including those related to hours of use, the suitability of the local highway network, and ecological matters. But as I am dismissing the appeal for other reasons, these matters would not change the outcome of the appeal.

#### *Conclusion*

33. I therefore consider the development is inappropriate considering its location and the character of the area, and results in harmful environmental effects on users of the surrounding land and the living conditions of nearby residents. Consequently, it conflicts with the relevant development plan policies, and there are no other material considerations that require a decision to be made other than in accordance with the development plan.
34. I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **The appeal on ground (f)**

35. Appeals on ground (f) are made on the basis that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.
36. The enforcement notice requires the use to cease, the removal of all plant, machinery, stock and raw materials associated with it, and restoration of the land to its former condition, removing any contamination caused by the use. The purpose of the notice is therefore to remedy the breach.
37. The appellant's case is that the use of the original area of the land (that subject to the LDC appeal) is lawful. It therefore considers the steps required are excessive, and need relate only to the additional land used for the drying and storage of processed materials. Consequently, it is said that the notice need not require the cessation of the manufacture of firewood products, the removal of plant or machinery, or any actions in relation to what can be described as the original area.
38. The original area is subject of the aforementioned appeal against the refusal of an application for an LDC. The appellant suggests that the mixed use of charcoal production and storage in the original area is lawful and therefore the notice is excessive in requiring such use to cease on the Land. However, in relation to that appeal, I have concluded that at the date the LDC application was made in November 2021, such use of the Land was not lawful. In addition, there is no ground (d) appeal before me, and I have no evidence that the use of the Land was lawful at the date the notice was issued in January 2012. It is therefore not excessive for the notice to require the cessation of the use on the entirety of the Land.
39. The requirements of the notice to cease the use of the Land, remove the associated items and restore the land to its previous condition, are the minimum necessary to remedy the breach of planning control. The appeal on ground (f) therefore fails.

### **The appeal on ground (g)**

40. Appeals on ground (g) are made on the basis that the time for compliance with the requirements of the notice is too short.
41. The notice requires the cessation of the use within 3 months and the removal of all plant, machinery, stock and raw materials and restoration of the land within 4 months.
42. The appellant considers additional time would be required to enable relocation of the business and facilitate removal of the plant, machinery and materials, and to restore the land. And that to ensure the business was not harmed, and permissions (for B2 use) and consents required by relevant bodies were obtained, a period of 24 months would be needed.
43. However, I must also balance the harm I identify in relation to the environmental effects on users of the surrounding land and the living conditions of nearby residents and in terms of the location and the character of the area.

44. A period of 24 months is considerable and akin to the grant of a temporary planning permission. I have not seen a compelling operational justification for a longer period, or any information relating to the availability, or otherwise, of other potential sites with planning permission for general industrial use. Neither is there evidence of the permitting requirements of other bodies. Nor, with the information before me, have I seen any apparent reason why the use could not cease within 3 months and the plant and machinery could not be removed within 4 months.

45. The appeal on ground (g) therefore fails.

### **Decision**

46. It is directed that the enforcement notice is corrected by:

- deleting the word "B2" from section 3 of the notice;
- deleting the words "and expansion of the use beyond the planning unit onto previously undeveloped/unused land" from section 3 of the notice; and,
- deleting the word "B8" from section 3 of the notice.

47. And varied by:

- deleting the words "B2" and "B8" from section 5(i) of the notice; and,
- deleting the words "permanently" from sections 5(i) and 5(ii) of the notice.

48. Subject to the corrections and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Peter White*

**INSPECTOR**